EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
(EASTERN DIVISION)

Pinpoint Incorporated, Plaintiff, v. Amazon.com, Inc., et al. Defendants.	Civil Action No. 03C 4954 Judge Suzanne B. Conlon Magistrate Judge Nan R. Nolan

DECLARATION OF RUSSELL DICKER IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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I, Russell Dicker, declare as follows:

I. INTRODUCTION

1. I make this Declaration in support of Defendants Motion for Summary Judgment. I have personal knowledge of the facts stated herein and if called upon, could and would competently testify thereto.

2. I am currently an employee of Amazon.com, Inc. (hereinafter "Amazon.com"). I have worked for Amazom.com for almost six years.

3. At Amazon.com I am the Senior Manager of Auto-targeted Email. I have held this position since July 2002. As part of my duties I oversee the operation of the Amazon.com's targeted email platform. Previously, I spent two years as a technical program manager on the personalization team. During this time, I managed the development of the first two versions of the Amabot system.

4. It is my understanding that certain features of the Amazon.com website have been accused of "scheduling customer access to data" or of indicating some "degree of content." I provide in this declaration an explanation of the operation of the accused features in the Amazon.com website, of which I have personal knowledge.

II. OPERATION OF CERTAIN FEATURES OF THE AMAZON.COM WEBSITE.

A. Amabot Campaigns

5. "Amabot" stands for "Amazon.com robot." The "Amabot" feature of the Amazon.com website is a system developed by Amazon.com to help automate the job of web

page editors in placing various display elements on the website. The available display areas on the Amazon.com website is limited. Amabot is a tool that aids in determining what this limited display area will be used for.

6. One function of the Amabot system is what we refer to as "Amabot Campaigns." This refers to three general classes of display elements that can be used with the Amabot system for generating web pages on the Amazon.com website. One class of display elements includes cooperative advertisements. Amazon.com enters into cooperative marketing agreements with third party vendors by which Amazon.com agrees to display certain advertisements in particular locations, for example, in certain locations on the main website page or "Gateway" page of the Amazon.com website.

7. Advertisement on a website is typically measured not only as a function of the size and location of the advertisement, but also the number of times it is shown, which is referred to as the number of impressions. Impressions are determined by the number of times a particular advertisement is displayed to an end user. Accordingly, Amazon.com's cooperative marketing agreements commit Amazon.com to show a particular advertisement in a particular place on the website for a given percentage of impressions over an agreed upon campaign period. For example, a record label may purchase advertising space for an upcoming release of a new CD. The cooperative marketing agreement might commit Amazon.com to show the CD advertisement in a particular display area for 30% of the total possible impressions. The terms of the agreement may vary depending on the marketing campaign; for example, for a new CD release the advertising campaign may last from a few weeks prior to the release to a few weeks after. The campaign may be brief but its planning or contractual arrangements may take place many months in advance. For example, a movie slated for a holiday release may have a two-

week campaign arranged during the previous summer.

8. The Amabot system ensures that Amazon.com meets its contractual requirements for campaigns arranged under cooperative marketing agreements (possibly negotiated several months in advance) by distributing impressions such that each advertisement gets the contractually-agreed to number of impressions during any given campaign. The Amabot system allows this process to be automated so that, once a campaign is set up, it is properly executed.

9. For the impressions within display areas that are not already committed under a cooperative marketing agreement, other classes of display elements can be shown. In these instances, Amazon.com displays various Amazon.com features. These features may include software "widgets" or other various display elements, generally with some internal merchandising purpose. At Amazon.com we use the term "widgets" to refer to various features or tools on our website that carry out some function that will ultimately display information to the customer. These widgets are various software tools developed by different groups within Amazon.com. For instance, the personalization group has a widget for the "Quick Picks" recommendations algorithm. Another type of widget may be a credit card offer.

10. Because display space on the website that has not already been committed through cooperative marketing agreements is limited, a competition scheme is used to determine which widget will be used to display information in a particular space on the website, *e.g.*, the top of the right column of the Gateway page. The competition scheme determines the percentage of the remaining, non-committed, impressions for which each of the competing widgets is to be used. This determination is reached using a "king of the hill" approach to distribute different shares of available impressions to the various widgets. Teams at

Amazon.com can choose to submit widgets if they want those widgets to compete for display in these areas. Initially, the widgets are given a fixed number of impressions based on availability. However, the percentage of available impressions is redistributed among the widgets depending on their performance under various business metrics. Widgets that perform better progressively increase their share of impressions, while lower performing widgets gradually lose their share of impressions.

11. One exception to the "king of the hill" approach is made to facilitate the testing of new widgets. When new widgets are designed, they are given a preferential share of impressions during a test phase and until enough performance data is collected from which to judge the performance of the widget. Then, the performance is evaluated and the impressions share for the new widget is increased or decreased accordingly.

12. The "king of the hill" competition runs continuously. Teams can submit their widgets at any time and they will remain in the competition for whatever time the team specifies as their competition period. For example, the Amabot campaign for one of the recommendation widgets, QuickPicks, has been active for several years and will run through the end of 2008, which is as far as the system accepts campaigns in advance. The number of impressions each widget gets assigned to it by the Amabot system depends only upon the performance of the widget and the number of impressions not already committed through cooperative marketing agreements. The number of impressions available for widgets is established as far in advance as possible based on the advertising campaigns to which Amazon.com is committed through cooperative marketing agreements, typically for a year or two.

13. Accordingly, the Amabot Campaigns feature does not schedule a customer's

access to data. To the Amabot system, a customer that accesses the Amazon.com website is simply another possible impression. Whether that impression is shown an advertisement or the results of a particular widget is determined randomly, without regard to anything known or unknown about the user. The Amabot system randomly chooses what to show so that Amazon.com meets its commitments to advertising partners, and the "king of the hill" competition for widgets is preserved.

B. Email Campaigns

14. As part of the company's marketing efforts, Amazon.com also operates an email merchandising system. Periodically, Amazon.com sends merchandising emails to customers to advertise products.

15. Amazon.com implements different types of merchandising email campaigns. One type of email campaign is the "Single New Product" (SNP) campaign. SNP campaigns are usually related to the release of a new book, CD, or movie. At some point prior to the product's release, Amazon.com delivers email messages announcing the new release to customers who may be interested in the new product. For example, Amazon.com may deliver an email to customers notifying them of a new Tom Clancy book that will be coming out in two weeks.

16. To begin an SNP campaign, Amazon.com develops a target group of customers who will receive the SNP email. For example, Amazon.com may determine what customers have previously purchased books by Tom Clancy, movies based on Tom Clancy's books, or books by similar authors (e.g., John Grisham).

17. SNP campaigns are designed to occur within a certain campaign period, *e.g.*, two

weeks before the product hits the shelves. The campaigns are designed based on business expectations and on marketing expertise, *e.g.*, experience may determine when it is best to begin advertising for a new product depending on the type of product. Once the target group of customers is selected, on the start date of the campaign, the system begins transmitting emails to customers. Beginning with the start date, customers from the target campaign group are selected at random and emails are sent at random times during the subsequent days. The system will try to send as many emails as possible as early as possible.

18. One feature of the system prevents the transmission of emails to some customers on any given day. This feature is called "Inbox Management," and is intended to prevent Amazon.com from sending a single customer too many emails. Inbox Management is based in part on when the particular customer was last sent an email. It also is based on the campaigns for which the customer is eligible. If a customer is eligible for multiple campaigns, the campaigns' performance and when else the customer would be eligible to receive email from the campaigns determine whether a particular email will be sent to the customer. On any given day, email messages are sent in a random order and at no specific time.

19. Campaigns are designed to run for a certain predetermined timeframe. Within the campaign timeframe, once a customer is eligible to receive email based on the Inbox Management feature, the time or date on which a particular message will be sent to a customer is determined randomly. The Amazon.com SNP email system, as it is designed, does not even allow Amazon.com to specify the exact day or time on which any particular customer will be sent an email. Of course, in no way does Amazon.com have any control over when or if the customer reads the email or for how long the customer chooses to look at the email.

20. A slightly different approach is used for "subscription email." Customers can request to receive various types of subscription emails. Some types of subscription email can be sent over regular intervals. For instance, Amazon.com has one type of email called, "New For You," that features newly released products. These email messages will be sent somewhere between once every twenty-two and twenty-eight days. The particular date is random for each customer. On a given day in which New For You email messages are being sent, they are sent in random order and at no particular time. The remaining types of subscription email either are sent according to no regular interval whatsoever, or operate similar to the "New For You" email described above but with different date ranges. In all events, data sent in the email is available for the user to access at the user's convenience. Amazon.com does not have any control over when or if the customer reads the email or for how long the customer chooses to look at the email.

C. QuickPicks Algorithm

21. In order to provide a "fresh" look of the website to every customer, several features in the Amazon.com website are constantly updated so that customers find the website interesting every time they visit it. For example, Amazon.com frequently changes webpage graphics, updates information about new offers, and updates the presentation of products in connection with the many features that operate in the website.

22. For example, according to one of these features, a recommendation can appear for a customer when they visit the Amazon.com "Gateway" page. Amazon.com recommendations generally are based on the customer's history and, if that history does not change, the customer might see the same recommendation on subsequent visits to the Amazon.com gateway page. To

help prevent this so that the website looks "fresh" to returning customers, the algorithm that generates this recommendation – the QuickPicks algorithm – causes the recommendation to be randomly selected from a group of possible recommendations.

23. Whenever a user chooses to access an Amazon.com webpage that includes a feature based on this algorithm, a program called "QuickPicksSourceCollector.cpp" is executed. This program searches through Amazon.com databases to find Amazon.com Standard Identification Numbers (ASINs) for items the user has looked at, purchased, etc. in the past. A set of up to thirty-two of these ASINS is collected. Out of these items, four are selected at random. Amazon.com then runs its standard "customers-who-bought-also-bought" process to find items similar to the four items randomly selected. These items form the basis for the recommendations shown.

24. The random selection of the four items is based on a random number that is generated based on a system time signal. The method used to generate the random number causes the number to be different only if the absolute hour in the time signal has changed. Accordingly, if a user accesses a webpage with "Your Recommendations" at 5:58 pm, a set of recommendations is randomly shown. If the user refreshes the page at 5:59 pm, the same set of recommendations is shown. If the user refreshes the page again at 6:00pm, a new random set of recommendations is generated and displayed, and will most likely be different than those shown at 5:58 and 5:59 pm. (By refreshing I mean clicking on the "refresh" button of the browser.)

25. The selection of the four random ASINs to use as input to the recommendation algorithm is not scheduling customer access to any particular data item. In fact, Amazon.com has no way of knowing which data item will be displayed in the "Your Recommendations"

feature for any user at any particular time. Further, Amazon.com does not change the Recommendations every hour. Only if a user accesses the Your Recommendations feature every hour do the items shown change every hour. Further, it is possible that the randomly generated recommendations would be the same as those generated randomly earlier. Randomization does not guarantee a new set of recommendations.

D. Browse Node Data

26. Amazon.com uses a hierarchical classification of its products as a customer navigation tool. The hierarchy enables customers to browse the website based on the assignment of items to various merchandising classifications or "nodes" of the hierarchy. At Amazon.com each of these merchandising classifications is called a "browse node." Examples of browse nodes include "Styles > Rock," "Books > Bestsellers > The Amazon.com 100," "Gifts > Under $100," etc.

27. The products available on the website are assigned to one or more of these browse nodes. Products are either assigned to a browse node or they are not. There is no partial, fractional, or degree of assignment to a browse node. Amazon.com does not indicate any degree or other quantifiable measure of membership to any browse node for any products.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 13, 2004

By: 

Russell Dicker
Senior Manager of Auto-targeted Email
Amazon.com